IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 98 OF 2004

Mr. Prajeet Naik,
s/o Mr. Premanand Narayan
Naik, r/o 'Prajeet',
House No.653, (near
Gomantak Press), St.
Inez, Panaji, Goa. ... Petitioner.

Versus

Goa Board of Secondary
& Higher Secondary
Education, through its
Secretary, Alto Betim,
Goa. ... Respondent.

Shri S. D. Lotlikar, Senior Advocate with Ms. Shambhavi Dessai, advocate for the petitioner.

Shri J. P. Mulgaokar, advocate for the respondent.

CORAM : P. V. HARDAS &
D. G. KARNIK, JJ.

DATE : 15th March, 2004.

ORAL JUDGMENT (Per Karnik, J.)

Rule. By consent, Rule made returnable forthwith.

2. By this Writ Petition under Article 226 of the Constitution of India, the petitioner challenges the Show Cause Notice dated 12th December, 2003, issued by the respondent and intimation dated 19th February, 2004, cancelling the petitioner's result of the S.S.C.Examination held in March, 2003.

3. The petitioner appeared for the 10th Standard Examination conducted by the respondent in the month of March, 2003. The result of the petitioner's examination was

declared. However, after issuing of a show cause notice dated 9th July, 2003, the declaration of the result of the petitioner was cancelled on the ground of mal practice by the petitioner at the examination. The petitioner challenged the said Show Cause Notice and the Intimation cancelling his result by filing a Writ Petition No.549/2003. By an Order dated 19th November, 2003, the Division Bench of this Court set aside the Show Cause Notice and intimation of cancellation of the result of the examination and allowed the Writ Petition, holding that no material was furnished to the petitioner alongwith the Show Cause Notice and that the Show Cause Notice was too vague, as it did not spell out the basis on which the action was contemplated. The Division Bench did not go into the other questions raised in the Writ Petition, in view of the finding that the Show Cause Notice was not proper. The Division Bench, however, held that it would be open to the respondent to initiate action against the petitioner by issuing fresh Show Cause Notice after furnishing necessary relevant material on the basis of which the action was proposed and also affording the necessary opportunity to the petitioner, as may be permitted by law.

4. After the judgment of the Division Bench, a fresh Show Cause Notice was issued to the petitioner on 16th December, 2003, asking him to show cause why the declaration of the result of his examination should not be cancelled on two grounds, viz. (i) the petitioner was instrumental in getting copies of question papers of History

and (ii) the petitioner had distributed copies of that question paper. A copy of the extract of the Report of the Sub-Committee was forwarded alongwith the notice. On petitioner's request, the material on the basis of which the Sub-Committee had reached the conclusion of guilt of the petitioner and recommended withdrawal of the result of his examination was also sent. The said material consists of copies of two statements, one of Shyam Vijay and the other of Sameer Gawas, being two other co-students who had appeared for the 10th Standard examination in March, 2003, alongwith the petitioner. No other material was placed before nor relied upon by the Sub-Committee for reaching its conclusion of guilt of the petitioner.

5. The learned counsel for the petitioner submitted that inspite of the request, the petitioner was not given an opportunity of cross-examining the said two witnesses whose statements were sought to be used against him and, therefore, no proper opportunity of hearing was given to him. We have perused the two statements given by the said two students. We are satisfied that the said statement, even without giving the petitioner any opportunity for cross-examination, does not inculpate the petitioner in any way.

6. In paragraph no.4 Shyam Vijay, the first witness, has stated:-

" I obtained the History paper from

> Prajeet(petitioner). He was studying in Progress High School. He had given this paper to 4 of us Sameer, Rohan, Shriram and me. We paid Rs.100/- each to Prajeet but the question paper for the exam was different. Prajeet was also called to the Police Station at that time but he got his result." (Underlining supplied)

There is no other material against the petitioner in his statement.

In paragraph 2 Sameer Gawas, the second witness, has stated:

> "History it was about 50%. We paid Rs. 400 to Prajeet Naik (petitioner) who said that he will add his 100 Rs. and obtained History notes for Rs.500. The amount of 400 was paid by Shyam Vijay, Suryakant Naik, Sriram and myself."

7. Shri Sameer Gawas has nowhere stated that the petitioner had given him a question paper, but what he had given were the notes for History paper. Though Shyam Vijay has stated that the petitioner had given him the History paper, he has further stated that the question paper for examination was different. Thus, the allegedly leaked question paper given by the petitioner to Shyam was not the question paper of History.

8. The only allegation made against the petitioner was that he was instrumental in getting and then distributing copies of the question paper of the subject History for the 10th Standard Examination. The only material which was available before the Sub-Committee was

these two statements. On the basis of these two statements, even taken at the face value, it was impossible to conclude that the petitioner had obtained the History paper and had distributed its copies to the said two students or to anybody else. The Sub-Committee has not recorded any reasons in its Report, but has recorded only one line finding as follows:-

"Prajeet Naik distributed History questions to Shyam Vijay, Sameer Gawas, Rohan Suryakant Naik and one Sriram."

None of the two students examined have stated that the copy of the question paper which was set for the examination was distributed by the petitioner. Thus the unreasoned finding recorded by the Sub-Committee was clearly perverse on the basis of the material that was available before it.

9. We are conscious of the fact that in matters of examination, judicial interference is limited and extremely rare. However, in the present case, there was no material before the Sub-Committee of the Board to hold that the petitioner had distributed the question paper of History. It is not shown that the petitioner had sold the History paper to either of the students. What was given by him were the notes for the History paper and the History paper was entirely different. In this view of the matter, it is not necessary for us to go into the question whether the

principles of natural justice were violated and the petitioner was not given proper opportunity of hearing, because even on the basis of the material which was placed before the Sub-Committee, we are of the opinion that no reasonable person could have reached a conclusion that the petitioner had obtained copies of the question paper for the subject History and had sold it or leaked it to other students.

10. The learned counsel for the respondent relied upon the decision of the Supreme Court in the case of **Ram Preeti Yadav vs. U.P. Board of High School and Intermediate Education & Ors.,** reported in (2003) 8 SCC 311, wherein the Supreme Court set aside the Order of the High Court by which the High Court had set aside the cancellation of the declaration of the result of the intermediate examination by the respondent no.3. In that case, it was held that the student had committed a mal practice at the examination and that he was the beneficiary of the fraud and as such, he must be presumed to be a party thereto. The Court further held that fraud vitiates everything. The Court also held that in case of mass copying the principles of natural justice need not be strictly complied with. The ratio of the said case is not applicable to the present case, because in the present case it is not proved that the petitioner had committed fraud or had sold the question paper of History to any student. It is also not shown that the petitioner had received a copy of the question paper of

History which was set for the 10th Standard Examination, because even the student who had allegedly received the copy had stated that the copy which was distributed by the petitioner was different than the question paper set at the examination.

11. Learned counsel for the respondent also relied upon the Judgment of the Supreme Court reported in **Madhyamic Shiksha Mandal, M.P. vs. Abhilash Shiksha Prasar Samiti & Ors.** reported in (1998) 9 SCC 236. That was a case of cancellation of the whole of the examination on the ground that the question paper had leaked. The present case is not a case of cancellation of the whole of the examination, but cancellation of the result of the petitioner alone on the ground that he had leaked the question paper of History. The ratio of the Judgment of the Supreme Court is, therefore, not applicable to the facts of the present case.

12. We, therefore, allow the Writ Petition in terms of prayer Clause (a) which reads as under:-

> "(a) For a Writ of certiorari, or any other appropriate writ, direction or order in the nature of certiorari, calling for the records and proceedings of the case, and quashing and setting aside the show cause notice dated 12th December 2003, of the Goa Board of Secondary & Higher Secondary Education, Alto Betim, Goa, issued to the Petitioner; and Intimation dated 19th February, 2004, sent by the Goa Board of Secondary & Higher Secondary Education, Alto Betim, Goa, to the Petitioner, purporting to cancel his result of March, 2003 S.S.C. Examination; and debarring him from

appearing at the October 2003 S.S.C. Examination."

Rule made absolute accordingly.

P. V. HARDAS, J.

D. G. KARNIK, J.

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